IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 1287 of 2005

Date of decision: 25th April, 2007

Nati Vikas Manch — Petitioner

Versus

State of H P & others — Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,J.

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Petitioner	**Mr G D Verma, Senior Advocate, assisted by Mr Romesh Verma, Advocate.**
For the respondents	**Mr M S Chandel, Advocate General, with Mr Ram Murti Bisht, Deputy Advocate General.**

Surinder Singh,J. (Oral)

The petitioner "Nati Vikas Manch,Dabri", is alleged to have been constituted by the existing "Gram Sabha Baldeyan" mainly for the purpose of carrying out different developmental activities in the local area.

The case of the petitioner is that presently Gram Sabha, Baldeyan in Tehsil and District Shimla

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

is having about 27 Revenue Estates in Tehsil and District Shimla, having a population of about 3719 persons. The people residing in revenue villages (Mauja) Kanda, Kialoo, Manjoo, Jungle Panartoo, Jagelaroo, Charaian, Ratanput, Jungle Sawaykiar, Manar of Gram Sabha Baldeyan had set up their claim before the respondents for the formation of separate and a new Panchayat with its head quarter at Dabri in Tehsil & District Shimla, highlighting their difficulties in view of the topography and means of communication etc. A resolution of the Gram Sabha Baldeyan, dated 2nd January, 2005 (Annexure P-1) to this effect was sent to the State Government, supporting their claim, following by another resolution dated 23rd February, 2005, (Annexure P-2) for establishment of a new Gram Sabha. It is alleged that these revenue villages have a population of about 965 persons and after excluding the aforesaid villages, population of "Gram Panchayat Baldeyan" would remain 2754. Again, the Gram Sabha Baldeyan, in its meeting held on 3rd April, 2005 passed another resolution and sent the same to the Block Development Officer for necessary action. When nothing was heard, the

matter was stated to have been taken up with the Chief Minister vide memorandum Annexure P-3. In short, the petitioners persistently pursued the matter with various authorities and also with the Minister Panchayati Raj. While considering the establishment of new Gram Sabhas of various Districts of the State, the claim of the petitioners did not find favour with the State Government. Thus CWP No. 893 of 2005 was filed by them wherein vide order dated 21st November, 2005, a Committee of the Principal Secretary (Panchayati Raj), Secretary (Finance) to the State Government and Director Panchayati Raj was constituted to take a decision in the matter after giving an opportunity of hearing. After hearing the petitioners on 23rd November, 2005 the aforesaid Committee considered their claim in the light of the following criteria fixed by the Government:-

(i) Minimum resultant population of the existing and newly proposed Gram Sabha before and after bifurcation is 1000 irrespective of the distance of villages proposed to be excluded from the HQ of the existing Gram Sabha; or

(ii) Minimum resultant population of the existing and newly proposed Gram Sabha before and after bifurcation is 750 and minimum distance of the villages, proposed

to be excluded from the HQ of the existing Gram Sabha is 10 K Ms or ;

(iii) Minimum resultant population of the existing and newly proposed Gram Sabha before and after bifurcation is 500 and minimum distance of the villages proposed to be excluded from the HQ of the existing Gram Sabha is 15 KMs;
Provided that the recommendation of Gram Sabha or MP/MLA of the concerned area is mandatory in each case.

Inter-alia the Committee came to the conclusion that if the aforesaid villages are excluded from the existing Gram Sabha and new Gram Sabha namely Manju with its Head quarter at Dabri is created, their population as per census would be 965 and the minimum distance of the farthest village proposed to be excluded from the Head quarter of existing Gram Sabha Baldeyan is 4kms. In nut shell in this case to create a Gram Sabha, just for a population of 965 people with a distance of 4 kms was not in accordance with the norms fixed by the Government or as per the provision of Section 3 of the H P Panchayati Raj Act, 1994. Thus, the Committee rejected the representation of the petitioner vide Annexure P-7.

Now this order (Annexure P-7) passed by the Committee is sought to be quashed and set aside, with a further direction to take immediate steps for creation of new Gram Sabha Manjoo (Dabri)with its Head quarter at Dabri after excluding the aforesaid villages from the existing Gram Panchayat Baldeyan, on the following grounds:

(a) That under Section 3 of the H.P Panchayati Raj Act, the State Government is competent to issue a notification declaring the group of contiguous villages with a population of not less than 1000 and more than 5000 to constitute one or more Sabha area specifying its Headquarter and further that the State Government on the request of Gram Sabha or otherwise and after the previous notification at any time, can increase the area of any Gram Sabha within its area all such Sabhas and villages, as considers it proper and similarly any area

of the Gram Sabha can be excluded and necessary orders can be passed for alterations of the Headquarter and area of Sub Division.

(b) Since it is the demand of the public for betterment with a view to have the developmental activities in the local area, therefore, the criteria fixed by the Government could be relaxed to a reasonable extent.

We have heard the learned counsel for the parties and have gone through the record of the case.

According to the learned counsel for the petitioner, the population of the villages, which are sought to be excluded from the existing Gram Sabha and included in the new Gram Sabha, has increased and the head quarter of existing Gram Sabha is situated on Shimla-Mashobra Tattapani main Road, is at an extreme corner of the existing Panchayat. Further the Gram Sabha Baldeyan is situated at the height of about 6000 from the sea

level and on the other hand the area of Kandha ward of this Panchayat is at the bank of Gumma Khad and the people have to cover a distance of about 33 kms through the DGBR road which come from Gumma to Basantpur-Durgapur and Baldeyan, for day to day work in the Panchayat Head quarter. To this effect affidavits have been placed on record.

Our attention has also been drawn towards the details of the recent population of Gram Panchayat Baldeyan (Annexure A-1) dated 15.4.2007 which is round about 4406.

As a matter of fact Section 3 of the H P Panchayati Raj Act prescribes the procedure of inclusion and exclusion of any Gram Sabha, which is quoted as under:

3. <u>Declaration of Sabha area</u>.

(1) "The government may by notification declare any village or group of contiguous villages with a population of not less than one thousand and not more than five thousand to constitute one or more Sabha areas for the purposes of this Act and also specify its head quarter;

Provided that in a Scheduled area the Government may by order declare any village or group of contiguous villages with a population of less than one thousand to constitute a Sabha area;

Provided further that the Government may, after having due regard of the geographical location, lack of means of transport and communication and administrative convenience, declare an area comprising a village or group of contiguous villages having a population of either less than one thousand or more than five thousand to constitute a Sabha area.

(2) The Government may, at the request of the Gram Sabha concerned or otherwise and after previous publication of a proposal by a notification, at any time,-

(a) increase any Sabha area by including within such Sabha area any village or group of villages; or

(b) diminish any Sabha area by excluding from such Sabha area any village or group of villages; or

(c) ……

(d) ……

(e) …….”

Whereas the “population” as referred in sub section (1) of Section 3 above means as ascertained at the last preceding census. In the instant case the figures of the last census were published in the year 2001. Thus, keeping in view the provision of the Act aforesaid and also the contentions raised by the petitioner, in our considered opinion, as the election of the Panchayats are already over more than a year ago, no relief as sought can be granted. However, the

matter can be given a fresh look under the above provisions in the changed circumstances, by the respondents without taking a hyper technical view more specifically considering all the necessary details, inconvenience faced by the people and also the distance to be covered by them to the existing head quarters of the Panchayat. Therefore, in these circumstances, we hereby direct that the petitioners shall make a fresh representation to the Principal Secretary (Rural Development) stating all the details with necessary relevant supportable documents, within a period of two months from today. Thereafter, on receipt of the representation, the Principal Secretary aforesaid shall convene a Committee of the already constituted Committee of the Officers i.e. Secretary (Finance), Director (Rural Development) to examine the representation of the petitioner, after affording due opportunity to them and shall thereafter decide the matter on or before 31st December, 2007 and convey its decision to the petitioners within a period of 15 days. The writ petition is accordingly disposed of in the above terms.

CMP No.2403 of 2005

In view of the order passed in the main writ petition, this application does not survive and stands disposed of accordingly.

(Deepak Gupta),J.

April 25, 2007 (Surinder Singh),J.
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